United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

Affidavit

76-6063

To be argued by
PETER C. SALERNO

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-6063

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

—v.—

ONE 1974 CADILLAC ELDORADO SEDAN,
SERIAL NO. 6L47S4Q407966,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR PLAINTIFF-APPELLANT

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Preliminary Statement

This is an appeal by the United States of America from an order and judgment of the Honorable Edward Weinfeld of the United States District Court for the Southern District of New York, entered March 4, 1976 pursuant to a decision filed December 30, 1975. That decision, rendered after a one-day trial before the Court sitting without a jury, dismissed the Government's complaint seeking forfeiture of the defendant vehicle pursuant to 21 U.S.C. § 881. The Government had sought forfeiture on the ground that the vehicle was used "to facilitate the . . . sale" of cocaine within the meaning of 21 U.S.C. § 881(a)(4). Judge Weinfeld's opinion denying forfeiture is reported at 407 F. Supp. 1115, and is reproduced in the Government's appendix at A-4.*

* "A" refers to pages in the appendix.

Issue Presented

Was the defendant vehicle used to facilitate the sale of cocaine?

Statement of the Case

A. Prior Proceedings

The United States commenced this forfeiture action by filing a verified complaint on October 15, 1974 (A-10). Ivan Santiago, the registered owner of the vehicle, appeared to contest the forfeiture, and on December 1, 1975, the case was tried before Judge Weinfeld (A-27 *et seq.*). In addition to the evidence adduced at trial, certain facts were in effect stipulated, either in response to requests for admissions (A-14-16) or in the pre-trial order (A-17-20). The sole evidence at the trial consisted of the testimony of Joseph P. Salvemini, the undercover Drug Enforcement Administration agent who participated in the events leading up to the seizure of the vehicle, and of Ivan Santiago, the registered owner of the vehicle, and two exhibits.

On December 30, 1975, Judge Weinfeld filed his opinion denying forfeiture, and judgment was entered March 4, 1976 (A-26). The Government's notice of appeal was filed April 5, 1976 (A-126).

B. The Facts

The facts in this case are largely undisputed. The differences between the testimony of the two witnesses at the trial were insignificant. The Government does not contend that any factual findings contained in Judge Weinfeld's opinion are erroneous, though the opinion is silent as to some matters of importance.

Agent Salvemini testified that on June 6, 1974, at about 1:30 P.M., he and an informant went to the apartment of Arlene Carlton in Manhattan, where they were introduced to an individual named "Pete," subsequently identified as Hiram Montanez (A-38-40). "Pete" and Salvemini discussed the sale of cocaine, "Pete" representing that "he and his cousin Ivan [Santiago] had brought 15 kilos of cocaine in from South America and that they had about three kilograms left" (A-39). A disagreement arose over "Pete's" unwillingness to sell Salvemini more than one-eighth of a kilogram, and "Pete" left the apartment (*id.*).

On June 7, 1974, Salvemini's informant told him that another meeting had been arranged in Carlton's apartment (A-37, 41). At about 4:45 P.M., Salvemini and the informant returned to Carlton's apartment. At about 5:00 P.M. "Pete" and Ivan Santiago, the claimant in this action, arrived (A-41), having driven there from the Bronx in the defendant vehicle (A-91-93, 96). Santiago stated "that he was there to straighten out the disagreement between" Salvemini and "Pete", and "he stated that he would deal [Salvemini] a kilogram of cocaine" for $26,000 (A-42).

The discussion then turned to the method of exchanging the drugs and the money. Salvemini wanted the transfer to be done by means of two rented cars (A-42), and Santiago wanted it to occur indoors (A-44). Santiago's concern was that the transfer appear natural. He said to Salvemini "that he had been dealing in cocaine for six years and that in his experience it has to be a natural thing" (A-42). Santiago stated, "I might walk up to you in front of a whole crowd of people at Christmas time with a Christmas package in my hand and there will be a kilo of cocaine in it, people will be all around and no one will know what's going on." (A-42-43).

The negotiations ended inconclusively solely on the question of how the exchange would occur—Salvemini was certain that the quantity and price had been agreed upon (A-44). The meeting ended with each party agreeing to consider the other's proposals concerning the method of transfer and to be in touch later (*id.*). Santiago and Montanez left the meeting together in the defendant vehicle (A-18, 45).

On Monday, June 10, 1974, at about noon, Salvemini and "Pete" met at a restaurant (A-45). "Pete" stated that he and Santiago still insisted that the transfer occur indoors and not on the street (A-46).

Salvemini suggested that he purchase only one-eighth of a kilogram so that the parties could develop trust (A-47). Montanez agreed, and the sale went forward that evening in Carlton's apartment. Salvemini paid Montanez $4,000 for the one-eighth kilogram. During the exchange Salvemini and "Pete" agreed to meet at the restaurant again the next day at noon (A-48).

Salvemini and Montanez met again on June 11, 1974 as agreed, and arranged for the sale of a kilogram of cocaine later that day (A-48-49). Montanez and Santiago were arrested that evening before that transaction was consummated (A-49-50). A search of Santiago's apartment on June 12, 1974, pursuant to a warrant, resulted in the seizure of the following items:

1. 307 grams (gross weight) of cocaine in a clear plastic bag.
2. 38 grams (gross weight) of marihuana in a clear plastic bag.
3. 28.4 grams (gross weight) of cocaine wrapped in a one dollar bill.
4. 29.5 grams (gross weight) of cocaine contained in tin foil.

5. A quantity of cocaine in a large spoon.
6. A triple beam balance scale.
7. An electronic calculator.
8. Some handi-wrap bags.
9. $2500 in $100 bills, representing Official Advance Funds.
10. $23,999.00 in bills.
11. $129.98 in coins.
12. 896.5 grams (gross weight) of cocaine contained in two plastic bags inside a brown paper bag.
13. Two false-bottomed suitcases containing cocaine residue.
14. 11 .38-caliber bullets.

(A-23, 51-52).

Santiago's own testimony at the trial (A-90-102) was not substantially different from Salvemini's, and in some respects it bolstered the Government's case. In an apparent effort to demonstrate that his use of his Cadillac, as opposed to another vehicle, to drive to the June 7 meeting at Carlton's apartment was not by prearrangement, Santiago testified that the only reason he used it was because it was double-parked in front of his business in the Bronx, and Montanez' smaller Toyota was in a small parking space nearby (A-90-93). Although Santiago denied that there was any discussion of narcotics or the upcoming meeting in the car (A-93, 94), he admitted that before getting into the car "Pete" told him they were going to see Salvemini, who was interested in buying cocaine, and Santiago said, "All right, we will go down and we will see what's up." (A-96). The only substantial contradiction of Salvemini's testimony was Santiago's assertion that at the end of the June 7 meeting, he told

Salvemini "to forget about it" because he did not like the way things sounded (A-94), that in fact no agreement had been reached on any topic at that meeting (A-95), and that "Pete" concluded the subsequent deals with Salvemini on his own (A-98-100). At the same time, he admitted that he had given the cocaine to "Pete", knowing that it was to be sold to Salvemini (A-98, 99, 101). Judge Weinfeld did not resolve these contradictions, noting only, as to the June 7 meeting, that Santiago and Salvemini "failed to agree on the mechanics of the proposed transaction and their negotiations terminated inconclusively." (407 F. Supp. at 1115; A-5).

After his arrest as described above, Santiago was indicted in the Southern District of New York and pleaded guilty to a charge of conspiring with Montanez ("Pete") and Carlton to distribute cocaine (A-18, 111-115). The June 7 conversation at Carlton's apartment, to which Santiago and Montanez drove in Santiago's Cadillac, was one of the overt acts charged in the indictment (A-112). Santiago admitted at his plea, in contradiction to his trial testimony just described, that at that meeting he negotiated for the sale of cocaine subsequently made by Montanez (A-18-19). Indeed, Montanez' subsequent trips, which Santiago tried to disavow at trial, were also overt acts charged in the count to which Santiago pleaded guilty (A-112).

The facts adduced at the trial in this matter demonstrate that Santiago was a substantial cocaine dealer. He admitted to Salvemini, at the meeting to which he drove his Cadillac, that he had been dealing in cocaine for six years (A-42), that he had recently brought 15 kilos of cocaine into the United States, and that he was shortly going to bring in 50 kilos more (A-43). In addition, a substantial amount of cocaine and associated paraphernalia were found in his apartment after his arrest (A-23, 51-52).

The meeting at Carlton's apartment on June 7, 1974 was clearly in furtherance of Santiago's illegal drug business. It could be inferred, from Santiago's guilty plea, that that meeting was also in furtherance of the sales that subsequently occurred. It was admitted to be an overt act in furtherance of the conspiracy to which Santiago pleaded guilty. The Government therefore contended in the District Court (and contends here) that Santiago's use of his Cadillac to transport himself and his cousin "Pete" Montanez to that meeting constituted a "facilitation" of the sale of cocaine and rendered the vehicle forfeitable to the United States pursuant to 21 U.S.C. § 881(a)(4).

Judge Weinfeld rejected this contention, however, finding that the vehicle had no substantial connection to any illegal activity, and was merely used "as a means of normal transportation . . . ." (407 F. Supp. at 1116; A-9). The Government contends that this conclusion is based on an erroneously narrow reading of the forfeiture statute, and a reading that frustrates the statute's purpose of exacting an economic penalty from traffickers in illegal drugs. Judge Weinfeld's decision should therefore be reversed.

ARGUMENT

The defendant vehicle was used to facilitate the sale of cocaine.

The Supreme Court has recently recognized that forfeiture statutes have a long history, a "broad sweep," and often a severe application. *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663, 680-89 (1974). That case, as have many others, upheld forfeiture of a conveyance, there a yacht, despite the unquestioned innocence of its owner, a company that had leased it to two persons

who subsequently transported marihuana on it. Unlike that case, there can be no suggestion in the case at bar that the owner-claimant is innocent. In fact, the evidence shows that he was, at the time of his arrest, a substantial drug trafficker. Forfeiture of his Cadillac under the circumstances of this case is fully consistent with, and indeed mandated by, both the plain meaning of the present forfeiture statute and its policy and legislative history.

The statute, 21 U.S.C. § 881, provides in pertinent part:

> "(a) Property subject.
>
> The following shall be subject to forfeiture to the United States and no property right shall exist in them:
>
> (1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this subchapter.
>
> (2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this subchapter.
>
> (3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).
>
> (4) *All conveyances*, including aircraft, vehicles, or vessels, *which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale*, receipt, possession, or concealment of property described in paragraph (1) or (2), except that—
>
> (A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the pro-

> visions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this subchapter or subchapter II of this chapter; and
>
> (B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State."

(Emphasis added).

The emphasized language, "*in any manner to facilitate* the . . . sale" of controlled substances, would appear to permit forfeiture if there is any connection, however insubstantial, between the use of the vehicle and the illegal activity. In the case at bar, the vehicle's connection was far from insubstantial. The meeting to which Santiago and Montanez drove in Santiago's Cadillac was, even when viewed in isolation, a significant event in furtherance of Santiago's illegal activities. In light of the subsequent sales actually made by Montanez, of cocaine supplied by Santiago, the meeting takes on more importance. It was clearly a business meeting in every sense of the term.

That Santiago's use of his Cadillac to go to such a business meeting, with his confederate, justifies forfeiture of the car, is evident upon examination of the policy behind the forfeiture statute, as evidenced in its legislative history. In enacting amendments to the statute in 1950, Congress said:

> "Enforcement officers of the Government have found that one of the best ways to strike at com-

> mercialized crime is through the pocketbooks of the criminals who engage in it. Vessels, vehicles, and aircraft may be termed the operating tools of dope peddlers, and often represent major capital investments to criminals whose liquid assets, if any, are frequently not accessible to the Government. Seizure and forfeiture of these means of transportation provide an effective brake on the traffic in narcotic drugs. The proposed legislation is intended to provide an additional means of combating this nefarious activity."

H. Rep. No. 2751, 81st Cong., 2d Sess., 1950 U.S. Code Cong. Serv. 2952, 2953-54.

An earlier version of this legislative history was relied upon heavily by a judge in the Southern District of New York, in decreeing forfeiture in a case remarkably similar on its facts to the case at bar. In *United States* v. *One 1941 Pontiac Sedan*, 83 F. Supp. 999 (S.D.N.Y. 1948) (Leibell, *J.*), the user of the Pontiac, one Ardito, drove it to a bar, where he agreed to sell narcotics to a Government informer the following day. The next day, Ardito drove the Pontiac to where the sale was to take place, but the sale did not occur because the informer did not have the money. The narcotics were not carried in the car—rather, a confederate apparently arrived at the meeting place with them separately. 83 F. Supp. at 1001. In addition to the foregoing, Ardito and his confederate were seen riding in the Pontiac once and near it on several occasions. *Id.* at 1002.

In concluding that these facts justified the forfeiture of the Pontiac, the District Court relied on the broad scope of the statutory language, allowing forfeiture of a vehicle used "to facilitate the . . . purchase [or] sale" of narcotics, and on the congressional purpose, expressed in the legislative history, of exacting an economic penalty

from those who derived substantial income from criminal activities. *Id.* at 1000-01.

Applying this reasoning to the facts described above, the Court, after quoting extensively from the legislative history, said:

> "If an automobile is used by a drug peddler as a 'means' of going to places to negotiate sales of narcotics and as a means of driving therefrom, to later on have the orders filled, and as a means for the joint transportation of himself and a confederate, who makes the delivery of the narcotics for the peddler, the automobile is in my opinion being used to facilitate the sale of narcotics, even though narcotics are not actually carried in the car."

Id. at 1001.

Judge Rifkind's decision in *United States* v. *One Dodge Coupe*, 43 F. Supp. 60 (S.D.N.Y. 1942), also supports the Government's position in this case. In that case, the Dodge was driven by one Granza to an intersection where Granza parked it and entered another automobile, which was driven by another person around the block. Granza stepped out of the second car carrying a package containing heroin, which he threw back into that car as an agent approached. Judge Rifkind found that the use of the Dodge to transport Granza to the meeting facilitated the *transportation* of the heroin even though the narcotics were never in that car:

> "By bringing Granza part of the distance over which the contraband would otherwise have to travel in order to reach him, it made that task less difficult and lessened the labor thereof . . . .
>
> This answer is in part prompted by the inescapable inference which must be drawn from the fact that the meeting of the Dodge and the

> Pontiac was not accidental but prearranged. In other words the Dodge was an instrumentality in a prearranged scheme of transportation which was not completed by reason of the intervention of the narcotics agents."

43 F. Supp. at 62.

The use of the vehicle in the *Pontiac* case is, of course, almost the same as the use Santiago made of his Cadillac in the case at bar. He clearly used it to go to a "business" meeting. In view of the congressional purpose of exacting an "economic penalty, thereby rendering illegal behavior unprofitable," which was impliedly approved by the Supreme Court in *Calero-Toledo*, *supra*, 416 U.S. at 686-87, this Court should rule that such use of a conveyance renders it forfeitable under the statute. Any other rule, and specifically the rule adopted by the District Court in the instant case, offers unwarranted protection to the principal in a narcotics conspiracy, who never touches money or drugs himself (A-65), but who is, of course, a *sine qua non* of the illegal traffic.

Some decisions appear to adopt a narrower interpretation of "facilitation" than that advocated by the Government in this case. These cases are distinguishable, however, and they should not militate against forfeiture in the case at bar. To the extent that they do, they are contrary to the legislative intent and should not be followed.

One of the leading cases supporting a more limited application of "facilitation" is *Platt* v. *United States*, 163 F.2d 165 (10th Cir. 1947). In that case a narcotic addict drove her mother's car to a drug store where she obtained morphine using an illegal prescription. She was arrested before she could re-enter the car. The Tenth Circuit held that the automobile was not used to facilitate the purchase

—"It was merely the means of locomotion by which Blanche Cooper went to the store to make the purchase. . . . The ease or difficulty of the purchase would have been the same no matter how she got there." 163 F.2d at 167.

While these statements might literally apply to the case at bar, *Platt* involved an innocent owner and "[a]n unfortunate woman, a drug addict," rather than a professional, illicit drug dealer. *United States* v. *One 1941 Pontiac Sedan*, 83 F. Supp. 999, 1002 (S.D.N.Y. 1948). Where an automobile is used once, almost casually, to transport an addict to a place where she purchases narcotics, its connection with illicit drug traffic is virtually nil. When it is used by two drug dealers to drive to a prearranged meeting for the express purpose of discussing the sale of large quantities of illegal drugs, the connection is substantial.

Platt was cited in *Howard* v. *United States*, 423 F.2d 1102 (9th Cir. 1970), for the proposition that "The use of an automobile to commute to the scene of a crime does not justify the seizure of that automobile under sections 781 and 782 [the old forfeiture statute]." 423 F.2d at 1104. See also *United States* v. *One 1952 Ford Victoria*, 114 F. Supp. 458 (N.D. Cal. 1953) (involving an innocent claimant).

Despite the above statement in *Howard*, its procedural posture, an appeal from a criminal conviction, makes it different from the case at bar. Howard had driven a Buick to a particular location, parked it, and began driving a Chevrolet that had been left there. The Chevrolet had been driven from Mexico with a load of marihuana by a Government informant, and Howard was arrested while driving it. The *Buick* was searched, without a warrant or consent, and of course not incident to Howard's arrest in the Chevrolet, and heroin was found in it. As the Court stated, in reversing Howard's conviction for transporting the heroin:

> "The Government's sole justification for the search was that it was incident to a seizure of the automobile under the forfeiture provisions of 49 U.S.C. §§ 781 and 782. That seizure was valid only if the seizing officers had probable cause to believe that the Buick had been used to 'facilitate' the transportation of marihuana in the load car [the Chevrolet].
>
> . . . The Government proved merely that the officers, at the time of the seizure, knew that Howard had driven the Buick to the location of the load car."

423 F.2d at 1103 (footnote omitted). The Court went on to state that such use would not justify a forfeiture, and therefore the seizure was improper.

Assuming that *Howard* is correctly decided, which we do not concede (since it appears inconsistent with Judge Rifkind's decision in *United States* v. *One Dodge Coupe*, *supra*), the decision should be viewed in its context, as a ruling on the propriety of the search of the Buick rather than on its forfeitability.

One of the principal cases relied upon by Judge Weinfeld was *United States* v. *One 1972 Datsun*, 378 F. Supp. 1200 (D.N.H. 1974), where the defendant vehicle was used twice to lead an undercover agent to the driver's apartment, where LSD was sold to the agent.* In denying forfeiture, the Court adopted a narrow rule, that facilitation required the Government "to establish a concrete, direct, and instrumental use of the vehicle in some aspect of the underlying criminal activity." 378 F. Supp. at 1203 (footnote omitted). Judge Weinfeld adopted this

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* This use, to drive to the owner's residence, is arguably more personal and less business-oriented than Santiago's use of his Cadillac in the case at bar.

rule (407 F. Supp. at 1116; A-9), though significantly, in a footnote, the *Datsun* case cited the *Pontiac* case in the Southern District of New York, discussed above, for a broader rule. 378 F. Supp. at 1203 n.6. The principal weakness of the *Datsun* case, however, is its erroneous reliance on what the Court saw as a trend toward narrowing the application of forfeiture statutes, a trend thought to have been spearheaded by the Supreme Court's decision in *United States* v. *United States Coin & Currency*, 401 U.S. 715 (1971). See 378 F. Supp. at 1204. At the time the *Datsun* case was decided, *Calero-Toledo* had not been, see 378 F. Supp. at 1204 n.9. In *Calero-Toledo*, the Supreme Court explicitly rejected any contention that any prior decisions concerning forfeiture had been silently overruled by *United States Coin & Currency*, and impliedly, by its approving discussion of the "broad sweep" of forfeiture statutes, the Court rejected any trend toward narrowing the application of those statutes. 416 U.S. at 688-89. This implication is especially apparent when it is recalled that *Calero-Toledo* upheld, against constitutional attack, a forfeiture against an innocent owner, which is not the case here.

It is thus evident that the rule of the *Datsun* case, on which Judge Weinfeld relied, is erroneous in light of *Calero-Toledo*.

Judge Weinfeld also cited *Simpson* v. *United States*, 272 F.2d 229 (9th Cir. 1959), for the proposition that mere use of a vehicle as a means of ordinary transportation to the scene of a crime does not render it forfeitable. (407 F. Supp. at 1116 & n.3; A-9). That case, however, and the Supreme Court case on which it relied, *United States* v. *Lane Motor Co.*, 344 U.S. 630 (1953), involved a different and more narrowly drawn forfeiture statute. That statute, 26 U.S.C. §§ 7302 and 7321 *et seq.*, provides for forfeiture of "any property intended for use *in*

violating the provisions of the internal revenue laws, . . . or which has been so used. . . ." 26 U.S.C. § 7302 (emphasis added). It is obvious that the italicized language above requires a considerably more substantial connection between the property and the illegal activity than does the statute at issue in this case, which condemns conveyances "which are used . . . in any manner to facilitate the . . . sale" of controlled substances. The decisions construing the narrower statute have no bearing whatever on the construction this Court should give to the statute that applies in this case.

United States v. *One 1952 Ford Victoria*, 114 F. Supp. 458 (N.D. Cal. 1953), also relied upon by Judge Weinfeld (407 F. Supp. at 1116 n.3; A-9), is also inapposite. It dealt with a "facilitation" statute, but the claimant opposing the forfeiture was the innocent seller of the automobile, which had an equity in the car. The only use of the car that was proved was that it had been driven to a hotel where the driver, in his room, possessed marihuana, and the Court held that that use did not constitute facilitation of the transportation of marihuana. There is no discussion in the case about whether such transportation was intended and had merely been interrupted by the driver's arrest. Had that been the case, the car would be forfeitable under Judge Rifkind's decision in *United States* v. *One Dodge Coupe*, *supra*.

In his decision, Judge Weinfeld was apparently moved by the fact that Santiago's use of the vehicle "had no more impact upon the contemplated transaction than if [Santiago and Montanez] had walked there, travelled there from outside the city by plane and landed at a heliport on East 23rd Street, or reached their destination by subway." (407 F. Supp. at 1117; A-9.) This argument is fallacious for several reasons. In the first place, the same could be said, in many cases, about the actual transportation of illegal drugs. In the case at bar, Montanez

could just as easily have brought the cocaine he actually sold to Salvemini from the Bronx to Carlton's apartment by subway as by car.* It could not reasonably be argued that the automobile that actually transported the cocaine was nevertheless not forfeitable.** The statute condemns the actual use of a conveyance in certain ways, and the statute's application should not be defeated merely because of the hypothetical possibility that other means of transportation would have served as well.

The second fallacy in Judge Weinfeld's hypothetical is its implication that the helicopter or the subway do not facilitate illegal conduct when used in the manner suggested. The Government contends that any conveyance, if used in the same manner that Santiago used his Cadillac in this case, would be forfeitable.***

This case is virtually of first impression in this Circuit. The only two Second Circuit cases Government counsel has found that deal with forfeitures of this kind at all are *United States* v. *Physic*, 175 F.2d 338 (2d Cir. 1949), and *United States* v. *Pacific Finance Corp.*, 110 F.2d 732 (2d Cir. 1940). Neither involved issues remotely related

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* Though the record in this case does not reflect the fact, Montanez made these trips with the cocaine by car.

** *Cf. United States* v. *One 1950 Buick Sedan*, 231 F.2d 219, 222 (3d Cir. 1956), which held a car forfeitable where negotiations took place inside it, but said in dictum that the use of the car facilitated the sale only because it helped conceal the negotiations, and that the car would not be forfeitable if the same events had occurred in the middle of the desert. Other decisions have held vehicles forfeitable where negotiations took place in them, without mention of whether or not the use of the vehicle helped conceal the transaction. *United States* v. *One 1950 Chevrolet 4-Door Sedan*, 215 F.2d 482 (10th Cir. 1954); *United States* v. *Ford Coupe Automobile*, 83 F. Supp. 866 (S.D. Cal. 1949).

*** The case of the subway is governed by the statute's express exclusion of common carriers. 21 U.S.C. § 881(a)(4)(A).

to those in the case at bar, but it is significant that in the *Pacific Finance Corp.* case this Court recognized that a similar forfeiture statute was to be given an "expanded meaning." 110 F.2d at 733. The authorities cited by the Government, particularly the legislative history, *Calero-Toledo*, and *United States* v. *One 1941 Pontiac Sedan*, *supra*, make it crystal clear that the statute involved in this case should also be interpreted broadly. Santiago's use of his Cadillac to drive himself and Montanez to the crucial June 7 meeting, which was followed in a few days by two sales executed by Montanez, is well within the bounds of the conduct Congress sought to punish in enacting the forfeiture statute. Judge Weinfeld's decision in this action interprets the statute too narrowly and should be reversed.

CONCLUSION

The order and judgment of the District Court, denying forfeiture and dismissing the Government's complaint, should be reversed, and the defendant-appellee Cadillac should be decreed forfeited to the United States.

New York, New York
June 14, 1976

Respectfully submitted,

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Form 280 A-Affidavit of Service by Mail
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State of New York)
County of New York) ss

CA 76-6063

Marian J. Bryant being duly sworn, deposes and says that she is employed in the Office of the United States Attorney for the Southern District of New York.

That on the 14th day of June, 1976 she served two copys of the within Govt's Brief and Appendix

by placing the same in a properly postpaid franked envelope addressed:

Michael P. Direnzo
15 Columbus Circle
New York, New York 10023

And deponent further says she sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse Annex, One St. Andrews Plaza, Borough of Manhattan, City of New York.

Marian J. Bryant

Sworn to before me this

14th day of June, 1976

Ralph I. Lee

RALPH I. LEE
Notary Public, State of New York
No. 41-2292838 Queens County
Term Expires March 30, 1977